

D.T.E. 03-42-A

Petition by the Massachusetts Bay Transportation Authority to commence a rulemaking pursuant to 220 C.M.R. § 2.00 et seq., to amend 220 C.M.R. § 151.00 et seq.: Rail Fixed Guideway System: Safety System Program Standard.

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ORDER PROMULGATING FINAL REGULATIONS

## I. INTRODUCTION

On September 11, 2003, the Department of Telecommunications and Energy (“Department”) opened a rulemaking, pursuant to a petition by the Massachusetts Bay Transportation Authority (“MBTA”), for the purpose of amending 220 C.M.R. § 151.00 et seq. entitled “Rail Fixed Guideway Systems: Safety System Program Standard.” Order Instituting Rulemaking, D.T.E. 03-42 (2003). In its Order, the Department noted that the revised regulations would increase MBTA track inspection and maintenance standards that are set forth in 220 C.M.R. § 151.08: Rail Fixed Guideway System: Track Inspection and 220 C.M.R. § 151.09: Rail Fixed Guideway Systems: Track Maintenance. Id. at 1. Pursuant to the MBTA’s enabling legislation, G.L. c. 161A, §3(i), the Intermodal Surface Transportation Efficiency Act of 1991, Pub. L. No. 102-40, 49 U.S.C. § 5330, and 49 C.F.R. Part 659, the Department is the MBTA’s state safety oversight agency for intrastate rail fixed guideway systems. As the state safety oversight agency, the Department is required to investigate hazardous conditions and determine corrective action to correct or eliminate those conditions. See 220 C.M.R. § 151.06; 220 C.M.R. § 151.07.

On August 21, 2001, in response to a number of derailments, the Department suspended the operation of the AnsaldoBreda No. 8 Low Floor Light Rail Vehicle (“No. 8 Car”) on the B-Line<sup>1</sup>, finding the vehicle represented a hazardous condition to the public pursuant to 220 C.M.R. § 151.06 and 220 C.M.R. § 151.07 (August 21 Letter Order on

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<sup>1</sup> The B-Line is a branch of the MBTA’s Green Line. The B-Line, Route 812, originates at Kenmore Station, where it emerges from underground and becomes a surface line to its termination at the Boston College stop.

MBTA No. 8 Car at 1). As part of the MBTA's Corrective Action Plan ("CAP") to reintroduce the No. 8 cars into revenue service, the MBTA increased its track inspections and implemented more stringent maintenance standards (D.T.E. 03-42 at 3). As a result of these changes, on March 14, 2003, the Department approved the limited reintroduction of the No. 8 Car into revenue service. Id. The Department recommended that the MBTA petition the Department to amend its track inspection and maintenance regulations to be consistent with the MBTA's revised standards. Id.

In the Order opening this rulemaking, the Department solicited comments on the proposed regulations. No comments were received, nor did any members of the public comment at a public hearing held at the Department's offices on November 5, 2003. The MBTA testified in favor of the proposed regulation. On November 10, 2003, the MBTA filed written comments summarizing recommended technical changes to the proposed regulations.

## II. FINAL REGULATIONS

### A. Introduction

This Order adopts final regulations establishing more stringent standards for MBTA rapid transit track inspections and maintenance programs. The amended regulations are part of 220 C.M.R. § 151.00, which is designed to ensure public safety and general welfare.

### B. Comments

The MBTA petitioned the Department to increase the frequency of rapid transit track inspections and to increase minimum track defect thresholds that are used to determine whether remedial action or restrictions on vehicle operation are required (Tr. at 5). The

MBTA testified that the original proposed regulations addressed light rail maintenance only, and offered modifications to include heavy rail maintenance thus encompassing the entire subway system (id. at 8). The MBTA's comments also detail other minor technical changes to the proposed amendments to the regulations (MBTA Comments at 1-4).

C. Analysis and Findings

The Department continuously reviews its policies and procedures designed to protect public safety pursuant to the general supervisory authority delegated to it by the General Court. See e.g., G.L. c. 161A, §3(i); Investigation by the Department of Telecommunications and Energy on its own motion to amend 220 C.M.R. § 151.08: Rail Fixed Guideway System: Track Inspection and 220 C.M.R. §151.09: Rail Fixed Guideway System: Track Maintenance, for the Massachusetts Bay Transportation Authority, D.T.E. 98-75 (1998). The Department finds that the proposed amendments of regulations on fixed rail guideway track inspection and maintenance are vital to the safe and efficient operation of the MBTA's rapid transit system and are consistent with the Department's approval of the MBTA No. 8 Car CAP. The Department also finds that these track inspection and track maintenance upgrades will enhance the safety of the traveling public. We note that the changes to the tables at 220 C.M.R. § 151.09(3) and (5) from 50 miles per hour to 60 miles per hour relate only to specifications for track condition and not to the actual upper limit for operating the No. 8 Car, which limit is governed by the CAP.

III. ORDER

Accordingly, after notice, hearing and consideration, it is hereby

ORDERED: That the regulation designated as 220 C.M.R. § 151.00 et seq. and entitled “Rail Fixed Guideway System: Safety System Program Standard,” attached hereto are hereby ADOPTED; and it is

FURTHER ORDERED: That the Secretary to the Department shall cause the revised regulation, adopted today and attached hereto, to be transmitted to the Secretary of the Commonwealth for publication in the next number of the Massachusetts Register for inclusion in the Code of Massachusetts Regulations, and it is

FURTHER ORDERED: That this regulation shall be effective upon publication in the Massachusetts Register.

By Order of the Department,

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Paul G. Afonso, Chairman

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James Connelly, Commissioner

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W. Robert Keating, Commissioner

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Eugene J. Sullivan, Jr., Commissioner

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Deirdre K. Manning, Commissioner